IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :8.4.2005

CORAM

THE HON'BLE MR. JUSTICE.P. SATHASIVAM

AND

THE HON'BLE MR. JUSTSICE. S.K. KRISHNAN

W.Ps.Nos.10957 to 10961 and 20590 to 20603 of 2004

and

W.P.M.Ps.Nos.12858, 12860, 12862, 12864, 12866, 24778, 24780, 24782, 24784, 24786, 24788, 24790, 24792, 24794, 24796, 24798, 24800 of 2004

1.Director General of Police
Kamarajar Salai,
Chennai- 4
2.State of Tamil Nadu
Rep. By its Secretary to Government,
Home (Police) Department, Chennai.9
3.Deputy Inspector of General Police
Salem Range, Salem.

... Petitioners in
W.P.No. 10957,10958,
10960,10961, 20600 /2004

Vs.

K. Annamalai — 1st Respondent in W.P.10957/2004
G. Veeraraghavan — 1st Respondent in W.P.10958/2004
T. Arthanari — 1st Respondent in W.P.10960/2004
G. Murugan — 1st Respondent in W.P.10961/2004
M. Kandasamy — 1st Respondent in W.P.20600/2004

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The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai. 600 104. ... Second Respondent in
W.P.10957 to 10961/2004, 20590
to 20603/04

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1.State of Tamil Nadu
Represented by its Secretary to Government
Home (Police) Department, Chennai-9.
2.Director General of Police,
Kamarajar Salai, Chennai-4.
3.Deputy Inspector General of Police
Salem Range, Salem.
4.Superintendent of Police
Dharmapuri District. ..Petitioners in W.P.No.10959 of 2004, 20590,20595,20601,20602/2004

VS

R. Karunakaran ... 1st Respondent in W.P. 10959/ 04
S. Mahalingam ... 1st Respondent in W.P. 20590/04
R. Udaykumar ... 1st Respondent in W.P. 20595/04
M.Goguldoss ...1st Respondent in WP.20601/04
R. Selvam ... 1st Respondent in W.P. 20602/04

1.Superintendent of Police,
Dharmapuri
2.Deputy Inspector General of Police
Salem Range, Salem
3.Director General of Police,
Kamarajar Salai, Chennai. 600 004.
4.State of Tamil Nadu,
Rep. By its Secretary to Government
Home (Police) Department,
Chennai. 9 ... Petitioners in W.P. 20591 and 20597 of 2004

vs

R. Krishnan ... 1st Respondent in W.P. 20591/04
Madhaiyan ... 1st Respondent in W.P. 20597/04

Deputy Inspector General of Police
Salem Range, Salem

Director General of Police,
Kamarajar Salai, Chennai. 600 004.

State of Tamil Nadu,
Rep. By its Secretary to Government
Home (Police) Department,
Chennai. 9 ..Petitioners in W.P. 20592 , 20593,20594,20596,20598,20599/2004

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vs

E.P. Gopal ... 1st Respondent in W.P.20592/2004
Madhu ... 1st Respondent in W.P.20593/2004
M.Jayavel ... 1st Respondent in W.P.20594/2004
S. Krishnan ... 1st Respondent in W.P.20596/2004
Arokkiam ... 1st Respondent in W.P.20598/2004
P. Renu ... 1st Respondent in W.P.20599/2004

Deputy Inspector General Of Police
Salem Range, Salem .. Petitioner in W.P.20603/04

VS

P. Maduraisamy ... 1st Respondent in W.P.20603/04

W.Ps.Nos.10957 to 10961 of 2004

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records relating to the order dated 30.4.2003 in O.A.No.1385 of 2003, O.A.No.1464/03, O.A.1357/03, O.A.1463/03 and O.A.1339/03 on the file of the second respondent and quash the same.

W.Ps.Nos.20590 to 20603 of 2004

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records relating to the order dated 30.4.2003 in O.A.No.1354 of 2003, O.A.1546/03, O.A.1528/03, O.A.1428/03, O.A.1426/03, O.A.1353/03, O.A.1527/03, O.A.1545/03, O.A.1669/03, O.A.1427/03, O.A.1384/03, O.A.1356/03, O.A.1355/03 and 4008/03 on the file of the second respondent and quash the same.

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For Petitioners : Mr.A.L. Somayaji, Additional Advocate General
Assisted by Mr.D.Krishnakumar, Special Government Pleader

For Respondent No.1 in W.P.No.10957 to 10961 of 2004:
Mr.R. Gandhi Senior Counsel for Mr.R.G. Narendhiran

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For Respondent No.1 in W.P.Nos.20590, 20595, 20600, 20602 and 20603 of 2004 : Mr.R.subramanian

For Respondent No.1 in W.P.Nos.20591, 20597 of 2004: Mr.S.V. Jayaraman Senior Counsel for Mr.T. Dhanasekaran

For Respondent No.1 in WP.Nos.20592, 20596, 20601/2004 Mr.S.Ravi for Sudha Ravi Associates.

For Respondent No.1 in WP.20593, 20594, 20599/04 : Mr.K.Venkataramani.

R.2 : Tribunal

N.A for 1st Respondent in WP.20598/04

COMMON ORDER

S.K. KRISHNAN, J.

Aggrieved by the common order dated 30.4.2003 passed by the Tamil Nadu Administrative Tribunal, Chennai, the respondents in O.As.Nos.1353 to 1357, 1384, 1385, 1426 to 1428, 1463, 1464, 1527, 1528, 1545, 1546, 1669 and 1339 of 2003, have filed the above Writ Petitions.

2. Since the issue involved in these petitions and the parties are one and the same, they were heard together and disposed of by a common order. For the sake of convenience, we call the parties as arrayed in W.P.No.20590 of 2004.

3. The facts leading to the filing of these Writ Petitions are summarised as follows:

4. In the year 1997, on the basis of the petitions complaining that the police personnel working in Karimangalam Police Station were collecting mamools from the bootleggers, sellers of I.D. Arrack and Toddy with the connivance of Inspector of Police and Sub Inspector Police and the same were shared among them, the Vigilance and Anti Corruption Officials of Salem and Dharmapuri conducted surprise raid on 7.5.1997. After preliminary enquiry, disciplinary action was initiated against 23 Police Personnel for the following delinquency.

"Indisciplinary conduct by collecting bribe amount from prohibition offenders in Karimangalam Police Station limits during the period from 3/96 to 5/97."

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5. Out of 23 personnel, Head Constable 603 Nmarasimhan died on 25.9.2002 and the charge against him was abated. Out of 22 personnel, the following three personnel retired from service on the date mentioned against them.

Thiru. M. Vairakkannu, Inspector of Police - 31.5.1997
Thiru. Durairaj, Grade I Police Constable - 31.7.1998
Thiru.Kolandai, Grade I Police Constable - 31.1.2000

6. Thereafter, on the basis of PR initiated against the first respondents in all these petitions, they were dismissed from service. As against such dismissal, they approached the Tamil Nadu Administrative Tribunal, which by its order dated 30.4.2003, directed the petitioners herein to reinstate them.

7. Aggrieved by the said order, the petitioners invoking the jurisdiction of this Court under the Article 226 of the Constitution of India, have filed the above Writ Petitions.

8. Heard both sides.

9. The learned Additional Advocate General appearing for the petitioners would contend that the Tribunal has not appreciated the evidence with regard to charge memo and also the findings of the Additional Superintendent of Police, PEW, Dharmapuri and thereby erred in setting aside the entire disciplinary proceedings against the first respondents and in such circumstances, this Court cannot act as an appellate authority on the findings of the disciplinary authority and therefore, the order of the Tribunal has to be set aside by allowing these petitions.

10. Further, he would vehemently contend that if the corruptive first respondents are reinstated in service, the image of the police force will be tarnished among the public and therefore, the order of the Tribunal has to be set aside.

11. In support of his contention, he relied on the following decisions:

a. LALIT POPLI VS. CANARA BANK AND OTHERS((2003)3 SUPREME COURT CASES 583).

b. U.P.S.R.T.C. AND OTHERS VS. HAR NARAIN SINGH AND OTHERS ((1998)9 SUPREME COURT CASES 220).

c. REGIONAL MANAGER, U.P. SRTC, ETAWAH AND OTHERS ((2003)3 SUPREME COURT CASES 605).

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12. Per contra, the learned Senior Counsel appearing for the first respondents would contend that as there is no evidence and materials to prove the charge, the Tribunal came to the right conclusion by setting aside all the disciplinary proceedings and directed the petitioners to reinstate them and therefore, no interference of this Court is warranted.

13. Further, the learned Senior Counsel would contend that the reinstatement of the first respondents, would not in any way tarnish the image of the Police Department as they have not committed such indisciplinary conduct.

14. In support of his contention, the learned Senior Counsel relied on the following decisions:

a. SHER BAHADUR VS. UNION OF INDIA AND OTHERS ((2002) 7 SUPREME COURT CASES 142).

b. FOOD CORPORATION OF INDIA, HYDERABAD AND OTHERS VS. A. PRAHALADA RAO AND ANOTHER ((2001) 1 SUPREME COURT CASES 165).

c. KULDEEP SINGH VS. COMMISSIONER OF POLICE AND OTHERS((1999) 2 SUPREME COURT CASES 10).

15. The learned counsel appearing for the first respondents in W.P.No.20590, 20595 of 2004 etc., relied on the following decisions:

a. KULDEEP SINGH VS. THE COMMISSIONER OF POLICE & OTHERS (1998(9) SUPREME 452).

b. UNION OF INDIA VS. K.A. KITTU AND OTHERS ((2001)1 SUPREME COURT CASES 65).

c. SRI PALANI DHANDAYUTHAPANI DEVASTHANAM REP. BY ITS EXECUTIVE OFFICER, D. RAMACHANDRAN, PALANI-621 601 VS. THE COMMERCIAL TAX OFFICER, PALANI CIRCLE II, PALANI (2002-1-L.W.318).

16. On a perusal of the proceedings of the third respondent, it is revealed that the first respondents were charged for the following delinquency. "Indisciplinary conduct by collecting bribe amount from prohibition offenders in Karimangalam PS limits during the period from 3/96 to 5/97.

17. The specific charges framed against the first respondents are as follows:

a. Charge No.1: The first respondents have joined hands with prohibition offenders of Karimangalam Police Station limits promoted prohibition offences; organised prohibition mamool systems and were

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collecting weekly prohibition mamool regularly from Toddy and I.D. Arrack sellers in Karimangalam Police Station limits and during the surprise check conducted on 7.5.1997 between 12.00 hours and 14.00 hours by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Dharmapuri with the assistance of District Inspection Cell Officer a sum of Rs.7805/- being the weekly prohibition mamool collected upto 7.5.1997 found in the left side drawer of the wooden table of Thiru.C.Madhu, Station Writer, along with chits and papers containing the details of prohibition mamool account and other expenditure were also seized.

b. Charge No.2: The accused officers No.1, 2, 3, 5 and 8 have unauthorisedly collected compounding fees from prohibition offenders at an enhanced rate of Rs.550/- from each prohibition offenders instead of Rs.500/- which was the compounding fee of originally collected by the Deputy Superintendent of Police (W.No.20) Krishnagiri sub-division and have also kept unauthorised collection, an amount of Rs.1290/- being the compounding fee collection from prohibition offenders.

18. Thereafter, the fourth respondent, who conducted the enquiry, has submitted a proved minute.

19. Further, it is revealed that out of 28 prosecution witnesses examined, ten official witnesses, namely, P.Ws.1, 2, 3, 4, 5, 6, 7, 24, 25 and 28, have given statement supporting the delinquency committed by the first respondents. However, 18 private individuals did not support the case of the prosecution.

20. So, from the proceedings of the third respondent, it is clear that the first respondents were dismissed from service only on the basis of the statements of the ten official witnesses.

21. We have also perused the order of the Tribunal. It is seen that the enquiry proceedings with minutes, statements of witnesses and entire files were produced before the Tribunal. After considering those materials, the Tribunal held as follows:

"Therefore, there is absolutely no evidence to show that mamools were collected by Karimangalam police or that they shared it among themselves. So learned counsel appearing for the applicants are justified in saying that there is absolutely no evidence to show that any of the bootleggers or any sellers have been paying mamool to Karimangalam Police

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or same was received by persons working in the Police Station. So evidence of these large number of witnesses is of no use to the department because none of them have supported the case of the department as against these officials. The earlier statements cannot be acted upon in view of the fact that they have denied giving such statements and they have stated that their signatures only were obtained. Moreover, those statements were recorded behind the back of the applicants."

22. With regard to Charge No.1, when the Tribunal has come to the conclusion in para - 13 of its order that there is absolutely no evidence to show that mamools were collected by Karimangalam Police or that they shared it among themselves and in the absence of any material or document contra to the conclusion arrived at by the Tribunal, we are of the view that the conclusion arrived at by the Tribunal has to be accepted.

23. Further, as stated above, when in the proceedings itself it is mentioned by the third respondent that except the ten official witnesses, no independent witness did support the case of the prosecution, we are of the view that, as rightly held by the Tribunal, there is absolutely no evidence to show that mamools were collected and shared among the first respondents.

24. With regard to Charge No.2, the findings of the Tribunal are as follows:

"So there is no evidence to show that excess money was collected than what was accounted for as compounding fees from prohibition offenders against whom cases have been registered and who have compounded the offences after pleading guilty. Moreover, P.W.28 examined during the enquiry is D.S.P. Krishnagiri. He has stated without any ambiguity that it was he who has imposed compounding fee after being satisfied that the offenders have admitted their offences and he has collected compounding fee and only Rs.500/- was collected from each of the offenders for which due receipts were given. Receipts were prepared in duplicates and original receipts have been given to the party and the carbon copy of the duplicate is maintained in the office of the DSP, Krishnagiri. Therefore, the case of the department that Karimangalam Police collected Rs.550/- from prohibition offenders and accounted only Rs.500/- and misappropriated the balance of Rs.50/- from each person is not substantiated but it

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is disproved by the evidence of P.W.28 D.S.P. Krishnagiri."

25. Further, in para -11 of its order the Tribunal held as follows:

" Any how it is proved that the amount of Rs.7805/- and Rs.1290/- found in the Police Station premises were not accounted for in the register or account books maintained by the Police Station in the normal course and none of the police officers also have given any explanation for such huge amount being found inside the Police Station. "

26. In para – 14, the learned Judge observed as follows:

" I have gone through the evidence of PWs 1 to 28 recorded by the enquiry officer carefully and as stated earlier evidence has proved only that unaccounted money of Rs.7805/- and Rs.1290/- were recovered from the police station by the Inspecting officer. Even though this may raise strong suspicion that it must be ill-gotten wealth. Suspicion cannot be substituted for proof and it will be not fair to punish each and every applicants for the discovery of unaccounted amount in the police station premises in the absence of any further evidence to connect the money with these applicants and also in the absence of any evidence to show that these people have taken shares from such ill-gotted wealth."

27. On the basis of the findings, the learned Judge came to the following conclusion.

" Therefore, I hold for the reasons stated above that there is absolutely no evidence to substantiate the charges against the applicants that they have collected mamool from offenders of the Prohibition Act and the amount collected has been shared by Inspectors of Police to Police Constables Grade-II."

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28. From the above it is clear that with regard to Charge No.2, since P.W.28 D.S.P., Krishnagiri, deposed that no excess amount was collected and what was collected from the offenders has been accounted for properly, the learned Judge came to the conclusion, in the absence of any independent evidence that the first respondents collected the amount in excess from the offenders under Prohibition

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Act, no amount was collected in excess by the first respondents and thereby the second charge was disproved.

29. Though the Tribunal found that the amount of Rs.7805/- and Rs.1290/- recovered from the premises of the Police Station is proved, no evidence is available to connect the first respondents with the recovered amount.

30. Relying on the principles laid down by the Apex Court in Lalit Poli Vs. Canara Bank and Others (2003) 3 Supreme Court Cases 583, the learned Additional Advocate General would contend that the Court cannot sit in appeal on the findings of the disciplinary authority.

31. However, we cannot accept such contention, in view of the principles laid down by the Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and others (1998(9) Supreme 452), which was relied on by the learned counsel appearing for the first respondents.

32. The Supreme Court in the above decision held as follows:

> "It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.
>
> Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. A

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broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly ureliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

33. In the case on hand, as we already discussed above, the third respondent imposed the extreme punishment, i.e. dismissal from service, on the first respondents purely based on the evidence of ten official witnesses, whereas 18 independent witnesses have not supported the case of prosecution and even out of ten, P.W.28 D.S.P. Krishnagiri has categorically stated that no excess amount was received from the offenders under the Prohibition Act, the findings of the disciplinary authority, in the eye of law, are perverse. When the alleged act of collecting bribery amount is said to be done by the first respondents, who are all police personnel, the evidence of independent witness is indispensable to prove the same. In our view, when the evidence of official witnesses has not been corroborated by the independent witness, the evidence of such official witnesses is unreliable and therefore, the imposition of extreme punishment on the basis of uncorroborated and unreliable evidence is not sustainable under law and therefore, the same is liable to be set aside. It cannot be said that there is no threat or pressure or motive to the official witnesses to give evidence against the first respondents and in such circumstances, we cannot rely the evidence of such official witnesses unless the same is corroborated by the independent witnesses or proved that there is no pressure or threat or motive for giving evidence by the official witnesses. In the above circumstances, we can only say, following the principle laid down in the above decision, which is squarely applicable to the case on hand and relied on by the counsel for the first respondents, that the findings the disciplinary authority are perverse and on that basis, the imposition of extreme punishment is arbitrary.

34. Further, as laid down by the Apex Court in SHER BHADUR VS. UNION OF INDIA AND OTHERS ((2002) 7 SUPREME COURT CASES 142), when in the case on hand, the evidence of official witnesses does not establish the connection or link or nexus between the recovered amount and the first respondents, such evidence cannot be treated as evidence in the eye of law and therefore, we are of the view that the findings of the disciplinary authority on the basis of such evidence are perverse and thereby the dismissal of the first respondents from service is unsustainable under law.

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35. Further, the contention of the learned Additional Advocate General is that the first respondents have filed Original Applications without exhausting the remedies available under the Act and that the Tribunal ought not to have entertained the applications of the first respondents and therefore, the order passed by the Tribunal on unentertainable applications is to be set aside as the same is against Section 20 of the Administrative Tribunals Act, 1985.

36. We have gone through the Section 20 of the Administrative Tribunals Act.

37. First of all the above contention should have been raised before the Tribunal.

38. On a plain reading of Sub-Section 1 to Section 20 of the Act, what we can infer is that the Tribunal ordinarily shall not admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

39. In the case on hand, when the livelihood of the first respondents is deprived of and to get remedied the same, it is not proper to expect even for a prudent person that they should avail all the remedies available under the Act and only then they should knock the door of Court of law. The circumstances, under which the first respondents have approached the Tribunal, cannot be and should not be seemed as ordinary.

40. In this regard, the learned counsel appearing for the first respondents relied on the decision of the Supreme Court in HARBANSLAL SAHNIA AND ANOTHER VS. INDIAN OIL CORPN. LTD AND OTEHRS((2003) 2 SUPREME COURT CASES 107), is squarely applicable.

41. Further, the learned Additional Advocate General would contend that the reinstatement of corrupt police personnel would tarnish the image of the Police Department and therefore, the order of the Tribunal has to be set aside.

42. While we have perused the proceedings of the third respondent, we have seen his anguishness and concern expressed in his proceedings. The proceedings reads as follows:

> " The proved charge is very serious in nature casting dark shadows in the conduct of a police officer. A corrupt police personnel harms the good name of the Police Department and the Govt. and is also a blood sucking parasite on the common man and the society which is at his mercy. Instead of being the custodian and protector of the dry law he has himself

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become the predator and allowed the boot-leggers to continue their trade. If the fence designed to protect the crops starts eating the crops, there is no need for such a fence. "

43. As we have already come to the conclusion that the findings of the disciplinary authority against the first respondents are perverse and on the basis of such finding, the dismissal of the first respondents from service is not sustainable under law, the contention of the learned Additional Advocate General cannot be accepted as the first respondents are not corrupt in the eye of law and thereby their reinstatement would not tarnish the image of Police Department and the Government.

44. As per the famous proverb, "As is the king, so are the subjects", unless the Head of Government and its machineries are committed to wipe out or eliminate corruption, which is a chronic tumor to the society as a whole, and chalk out stern and effective measures, whatever the preachings with regard to elimination of corruption would only become a farce. One Ramu Goes then one Somu comes to sustain corruption. In other words, the said tumor, corruption, never goes unless and until the above said commitment and a movement in that direction is emerged, which this Country needs.

45. In the light of above discussions, we are of the view that the order of the Tribunal is not suffered from any kind of infirmity.

46. In result, we dismiss all these Writ Petitions confirming the order of the Tribunal. No costs. Consequently, connected W.P.M.Ps. are also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary to Government
Home (Police) Department, Chennai-9.

2.The Director General of Police,
Kamarajar Salai, Chennai-4.

3.The Deputy Inspector General of Police
Salem Range, Salem.

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4.The Superintendent of Police
Dharmapuri District.

5.The Registrar
Tamil Nadu Administrative Tribunal
Chennai.

One cc to Mr.R.G.Narendhiran, Advocate SR.16900.

One cc to Govt. Pleader SR.16868.

Three ccs to Sudha Ravi Associates, Advocate SR.16986.

Three ccs to Mr.K.Venkataramani, Advocate SR.17132.

Two ccs to Mr.N.Maninarayanan, Advocate SR.16894 & 16895.

Five ccs to Mr.R.Subramanian, Advocate SR.17072 to 17076.

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